

MICHAEL J. WHITTLE ET AL.

IBLA 97-235

Decided December 18, 1997

Appeal from a Decision of the Oregon State Office, Bureau of Land Management, finding mining claims abandoned and void. ORMC 139369, et al.

Affirmed.

1. Appeals: Generally--Mining Claims: Rental or Claim Maintenance Fees--Regulations: Interpretation

Mining claim maintenance fee waiver certificates required to be filed not later than Aug. 31, 1996, that were postmarked Sept. 6, 1996, and received and date stamped by BLM on Sept. 9, 1996, were not timely filed under 43 C.F.R. § 3833.0-5(m), a rule requiring the existence of a postmark within the period prescribed by law.

APPEARANCES: Michael J. Whittle, Grants Pass, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Michael J. Whittle and Tommy Cornum have appealed from a January 24, 1997, Decision of the Oregon State Office, Bureau of Land Management (BLM), declaring Oregon mining claims ORMC 139369 and ORMC 139370 forfeited by operation of law under the Omnibus Reconciliation Act of August 10, 1993 (Act), 30 U.S.C. §§ 28i through 28k (1994), and 43 C.F.R. Subpart 3833, for failure to timely pay claim maintenance fees for the 1997 assessment year or file certificates of exemption from payment of such fees for each claim.

Mining claimants seeking exemption from maintenance fee payment must, in addition to filing timely affidavits of assessment work, file a waiver certification not later than August 31. See 43 C.F.R. §§ 3833.4(a)(3) and 3833.1-7(d). If maintenance fees for unpatented mining claims are not paid, or certificates of exemption from payment are not timely filed, the claims are forfeited. 43 C.F.R. § 3833.4(a)(2); Alamo Ranch Co., 135 IBLA 61, 76 (1996).

Appellants state they timely filed maintenance fee waiver certificates with BLM when they placed them in a mailbox outside the post office at Grants Pass, Oregon, on August 29, 1996. The certificates were received by BLM on September 9, 1996, in an envelope postmarked September 6, 1996. They were found by BLM to be untimely filed under 43 C.F.R. §§ 3833.0-5(m) and 3833.1-7(d) because they were not received and date stamped by the proper BLM office on or before August 31, 1996, and postmarked no later than that date. Nonetheless, Appellants argue that by depositing their waiver certificates in a mailbox outside a post office on August 29, 1996, they "did everything that was required of us to file these documents before the due date of August 31, 1996." Their Notice of Appeal explains:

Recognizing that we were close to the filing date, we did get the documentation signed and the maintenance waiver certifications for each claim were completed before August 31, 1996 and recorded in Josephine Co. on August 29th, 1996. A few minutes later, we delivered the documents to the Grants Pass, Oregon post office and deposited them in a mail receptacle outside the post office.

We inquired at the Grants Pass post office, upon receipt of your [forfeiture] notice and we were told that:

- 1) All of the mail from Grants Pass, Oregon is transferred to Medford, Or., for processing. This explains the Medford postmark.
- 2) We were also told that the mail should have the postmark for the same day it is mailed, but it could happen that it would be postmarked at a later date.
- 3) We questioned the fact that it is postmarked 7 days after we mailed it and were told by Jerry Karl, an official of the Grants Pass main post office, that this could have happened, but because such a long time has passed (August to February) they wouldn't still have a record of any problems that might have occurred with delay, etc. during the week in question.

[1] The words "file" and "filed" mean "being received and date stamped by the proper BLM office." 43 C.F.R. § 3833.0-5(m). The certificates sent to BLM by Appellants were not filed when they were deposited in the mailbox outside the post office at Grants Pass. See, e.g., Anthony J. Perchetti, 89 IBLA 320, 321 (1985) (location notices not received and date stamped by BLM within 90 days of location were not filed timely although they were postmarked before the deadline). Filing did not occur in this case until the envelope containing Appellants' certificates was received and date stamped by BLM on September 9, 1996. The rule states that when a mining claimant sends documents such as waiver certificates

so that they are received by BLM after a deadline, timely filing will nonetheless take place if the certificates are "contained within an envelope clearly postmarked by a bona fide delivery service within the period prescribed by law." 43 C.F.R. § 3833.0-5(m). In this case, the prescribed period ended on August 31, 1996, as Appellants acknowledge. The envelope containing their certificates, however, was not postmarked before the deadline, and their certificates were not timely filed as a result. While the rule does provide a 15-day grace period, that proviso only applies if a postmark exists that meets the filing deadline. Id.

Responsibility for satisfying fee requirements imposed by the Act rests entirely with Appellants since the Act provides "that failure to pay the claim maintenance fee or the location fee as required by [this Act] shall conclusively constitute a forfeiture of the unpatented mining claim * * by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994); William Jenkins, 131 IBLA 166, 168 (1994). Appellants' fee payment waiver certificates were not filed timely under the postmark rule provided at 43 C.F.R. § 3833.0-5(m). The postmark rule was properly applied by BLM in this case because Appellants chose to send their certificates through the mail, an action that resulted in their receipt by BLM after the August deadline was past. Under the circumstances, BLM correctly found that, as a consequence of Appellants' failure to timely pay the required fees or seek waiver thereof, their mining claims were forfeited by operation of law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge